

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DONALD KILGORE

Plaintiff

v.

BROOKELAND INDEPENDENT
SCHOOL DISTRICT

Defendant

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CIVIL ACTION NO. _____

JUDGE _____

JURY

ORIGINAL COMPLAINT

Donald Kilgore ("Mr. Kilgore") for his complaint against Defendant Brookeland Independent School District ("BISD") would show:

I

Introductory Summary

1. Mr. Kilgore commences this action against BISD pursuant to the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 *et seq.* ("ADEA") and which prohibits in relevant part age discrimination in employment.
2. BISD employed Mr. Kilgore as a school bus driver in April 2011 when Mr. Kilgore reached the age of 72. One week later BISD notified Mr. Kilgore that he would not be employed for the upcoming 2011-2012 school year. BISD replaced Mr. Kilgore with a younger bus driver.
3. Mr. Kilgore seeks declaratory relief and lost pay, reinstatement, liquidated damages and costs, including attorney fees as authorized by law.

II

Jurisdiction

4. The Court has jurisdiction over Mr. Kilgore's ADEA claims conferred by 29 U.S.C. § 626(c) (ADEA) and 28 U.S.C. § 1331 (federal question).

III

Parties

Plaintiff

5. Plaintiff Donald Kilgore is a citizen of the United States, a resident of Sabine County, Texas, and an employee entitled to the protections against age discrimination under the ADEA.

Defendant

6. Defendant Brookeland Independent School District is a school district and employer subject to the prohibition against age discrimination under the ADEA. Defendant BISD may be served through Superintendent Kevin McCugh, Rt. 2, Box 18, Loop 149, Brookeland TX 75931.

IV

Administrative Exhaustion

7. On June 14, 2011 Mr. Kilgore signed and filed his Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"). That form had been prepared for his signature by the EEOC. On July 1, 2011 the EEOC issued Mr. Kilgore's Notice of Right-to-Sue within 90 days. Now, within that 90-day period, Mr.

Kilgore files suit. Mr. Kilgore has therefore satisfied his burden to exhaust required administrative procedures.

V

Facts

Background

8. Mr. Kilgore was born April 5, 1939

9. At all times relevant to these proceedings Mr. Kilgore was a well-qualified school bus driver, doing a good job and free of citations.

10. Mr. Kilgore worked for BISD as a school bus driver from 2003 until 2006 and then was rehired in 2009.

11. In April, 2011, BISD had five bus drivers. Of the five, Mr. Kilgore was the oldest. The others were in their 30's, 40's or 50's (est.).

What Happened

12. On April 5, 2011 Mr. Kilgore celebrated his 72nd birthday.

13. About a week later, on April 13, 2011, Mr. Kilgore was summoned to a meeting with BISD school superintendent McCugh. Superintendent McCugh told Mr. Kilgore that

- a. Mr. Kilgore would not be employed after the 2010-2011 school year;
- b. the termination was due to budget cuts and the bus routes would be reorganized to require only four drivers; and
- c. that Mr. Kilgore was being selected for termination because he was eligible for retirement and could still drive as a substitute.

14. Mr. Kilgore's last day of work for BISD was May 27, 2011.

15. In fact, what Superintendent McCugh said to Mr. Kilgore on April 13, 2011, described above, did not prove to be accurate. BISD has replaced Mr. Kilgore with a younger person.

16. BISD terminated Mr. Kilgore because of his age and its actions in doing so were willful.

17. As a result of the discriminatory termination Mr. Kilgore has lost, and continues to lose, significant income.

Relief Sought

18. Mr. Kilgore seeks an award of lost compensation (including the value of fringe benefits), reinstatement and/or front pay, costs and attorney fees, a declaration that BISD has willfully terminated Mr. Kilgore on account of his age in violation of the ADEA, and an award of liquidated damages.

VI

Cause of Action

19. Defendant BISD's treatment of Mr. Kilgore, described above, creates a cause of action under the ADEA.

VII

Jury Demand

20. Plaintiff Kilgore demands a trial by jury on all issues so triable.

VIII

Prayer for Relief

Wherefore Plaintiff Kilgore prays that the Court enter judgment in his favor against Defendant BISD, providing:

- a. that BISD had terminated Mr. Kilgore on account of his age in violation of the ADEA;
- b. that BISD shall pay Mr. Kilgore his lost compensation, including the value of fringe benefits;
- c. that BISD shall reinstate Mr. Kilgore, or if reinstatement is impracticable, pay Mr. Kilgore lost future pay;
- d. that BISD shall pay Mr. Kilgore an amount of liquidated damages equal to the amount of his lost back pay;
- e. that BISD shall pay Mr. Kilgore's costs of suit including attorney fees; and
- f. any and all additional relief to which Mr. Kilgore is entitled, including interest.

Respectfully submitted,

/s/ TIMOTHY B. GARRIGAN

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